Signed Consent Forms in Criminological Research: Protection for Researchers and Ethics Committees but a Threat to Research Participants?¹

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RUNNING HEAD: SIGNED CONSENT FORMS IN CRIMINOLOGICAL RESEARCH

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Abstract

The use of signed consent forms is mandated by most Human Research Ethics Committees and social science ethics codes. In this paper we argue that the use of signed consent forms in criminological research provides protection for researchers and ethics committees by providing documentation that informed consent has been obtained, but poses a threat to potential research participants, especially offenders. Consent forms provide a record of participation in a research project, providing the potential for research documentation to be subpoenaed. This is a threat to the offender’s future wellbeing in research where offenders are asked to report on illegal activities. Further, there is a general reluctance amongst offenders to sign consent forms, creating a barrier to participating in research and potentially affecting response rates and representativeness of samples. Concerns over confidentiality may result in limited disclosure and self-protecting responses. We recommend the development of alternative methods of obtaining informed consent that provide greater protection of research participants’ confidentiality.
Introduction

Conducting criminological research is fraught with ethical and legal considerations. Institutional ethics committees impose requirements on researchers to ensure that research does not breach nationally accepted ethical or legal standards. However, these requirements have the potential to limit the type of research that can be conducted and the way in which the research is conducted. In essence a focus on protection may lead to poor quality research. This may be an acceptable consequence if the human rights of research participants were significantly enhanced or protected. However, as we will argue in this paper, there is no evidence of this. Indeed it is more likely that just the opposite is the case.

There is a documented history of concern over this issue among criminologists within Australia over the past decade. In 1995 a forum was conducted at the University of Melbourne on ethical and legal issues when conducting research into illegal behaviours (Fitzgerald & Daroesman, 1995). The forum focused on limits to confidentiality, the legal and ethical consequences of research into illegal activities, the need for regulatory and legislative frameworks and guidelines, and balancing the public interest in research versus prosecuting criminal behaviour (Larkins, 1995).

In 1997, Dixon argued that research with offenders ‘is coming under increasing threat from institutional ethics committees which have raised legal and ethical objections to proposed projects’ (Dixon, 1997:211). Specific issues Dixon identified included the inability of researchers to legally protect confidentiality, the potential criminal liability of researchers, the inability of research participants to understand consent forms and research participants’ negative reaction to references to legal liability.
Dixon argued that the use of written consent forms is not always appropriate in criminological research, and recommended greater representation of disciplines on ethics committees to counteract the dominance of the medical and scientific models.

These issues have not been resolved and continue to surface. Indicative of this is the current research project being led by the NSW Bureau of Crime Statistics and Research documenting the relationship between ethics committees and criminological research. In this paper, we examine one aspect of possible contention between ethics committees and researchers: the requirement for use of signed consent forms in criminological research. The examination of this issue is situated within the parameters of current principles and guidelines for ethical research. The differing perspectives of ethics committees, researchers and research participants are outlined, legal issues identified and alternatives to signed consent forms suggested.

**Principles of Ethical Research Underlying Informed Consent**

The guiding authority for the conduct of ethical research in Australia is the National Health and Medical Research Council (NHMRC). This committee has promulgated the Statement on Ethical Conduct in Research Involving Human Subjects (NHMRC, 1999). The Statement consists of a series of guidelines made in accordance with the *National Health and Medical Research Council Act* 1992 (Commonwealth). Based on the principles of integrity, respect for persons, beneficence and justice, the NHMRC statement is aimed at protecting the welfare and rights of research participants. This statement is supplemented by the Human Research Ethics Handbook (NHMRC, 2001) which provides commentary on the statement.
The NHMRC Statement reflects current international thought on ethical research. Influential documents in the development of the statement include the 1947 Nuremberg Code, the 1964 Declaration of Helsinki, and later documents developed in international fora outlining ethical standards. The first ‘Statement on Human Experimentation’ was published by NHMRC in 1966. Since this time, the statement has been reviewed and supplementary notes have been developed (NHMRC, 1999).

By the mid 1970’s, informed consent had emerged as a ‘major moral rule for human research’ (Faden & Beauchamp, 1986:86). The requirement to obtain voluntary informed consent from research participants is based on three ethical principles: respect for autonomy, beneficence and justice (Faden & Beauchamp, 1986).

The requirement to obtain voluntary informed consent prior to undertaking research is specified in the NHMRC statement and other influential ethical codes. For example, the 1947 Nuremberg Code consisted of ten standards required for human experimentation as laid down in the judgment by the war crimes tribunal at Nuremberg (BMJ, 1996). The first of these standards related to the need for voluntary informed consent of all research participants.

Similarly, the Belmont Report in the United States of America (The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979) identified respect for persons, beneficence and justice as the basic ethical principles applicable to research. The first application
of these principles resulted in the requirement to obtain informed consent. The Report proposed the standard of ‘the reasonable volunteer’ who is fully informed about the research, possible risks and the voluntary nature of participation. The report stated it was the researcher’s responsibility to ensure that the information provided was clearly comprehended and consent was obtained without coercion or undue influence.

These influential documents on ethical standards in the conduct of research all have their roots in medical research. While some (e.g. the Belmont Report and NHMRC Statement on Ethical Conduct in Research Involving Humans) have been expanded to include other types of human research, the focus remains on the medical/scientific model. This means that one concept underlying the thinking of those developing codes is that the research may involve physical or intrusive procedures. A major complaint of behavioural and social science researchers is that ethics committees use these biomedical guidelines to regulate their research without sufficient recognition of the differences in the type of research conducted (Azar, 2002).

**Professional Guidelines for Ethical Research**

Many disciplines and professions have developed their own guidelines for ethical research in the form of codes of ethics. Within the field of Criminology, codes of ethics have been developed by some societies. Two relevant examples are the Australian and New Zealand Society of Criminology (ANZSOC) Code of Ethics and the British Society of Criminology Code of Ethics. These codes share a focus on the advancement of criminological knowledge, the protection of academic freedom, responsibilities to colleagues and to research participants and the conduct of relationships with other organisations. The similarities in codes are not surprising
given the ANZSOC Code of Ethics largely draws on the British Society of Criminology Code of Ethics.

The need to obtain informed consent is approached in these codes as part of the goal of promoting and protecting the interests of research subjects. For example the British code has a section on the obligations of researchers to research participants which begins:

Researchers should recognise that they have a responsibility to ensure that the physical, social and psychological well-being of an individual participating in research is not adversely affected by participation in the research. They should strive to protect the rights of those they study, their interests, sensitivities and privacy. Researchers should consider carefully the possibility that the research experience may be a disturbing one, particularly for those who are vulnerable by virtue of factors such as age, social status, or powerlessness and should seek to minimise such disturbances. They should also consider whether or not it is appropriate to offer information about support services (e.g. leaflets about relevant self-help groups).

The British Society of Criminology Code of Ethics goes on to spell out the issues associated with informed consent. It is proffered that these details are much more relevant to the challenges faced by researchers in a social science such as criminology than those contained in the NHMRC document which were clearly drafted with medical research in mind:
Researchers should base research, so far as possible, on the freely given informed consent of those studied. This implies a responsibility on the part of the researchers to explain as fully as possible, and in terms meaningful to participants, what the research is about, who is undertaking and financing it, why it is being undertaken, and how any research findings are to be disseminated. Researchers should also make clear that participants have the right to refuse permission whenever and for whatever reason they wish. Research participation should be informed about how far they will be afforded anonymity and confidentiality. Researchers should consider the possibility of discussing research findings with participants and those who are the subject of the research. Where there is a likelihood that identifiable data may be shared with other researchers, the potential uses to which the data might be put should be discussed with research participants. Research participants should be informed if data is likely to be placed in archives, including computer archives. Researchers should respect promises of confidentiality and not pass on identifiable data to third parties without participants' consent. Researchers should also note that they should work within the confines of current law over such matters as copyright, confidentiality and data protection.

Where societies have not developed a code of ethics, members may be encouraged to use the code of ethics of their background discipline (e.g., psychology, sociology). For example, The American Society of Criminology has not yet formally adopted a code of ethics, although a draft document has been prepared and is being discussed by
their Executive Board. The American Society of Criminology currently recommends that interested persons examine codes of ethics adopted by other professional associations.

Within universities in Australia Human Research Ethics Committees (HRECs) have been established to review and approve research proposals undertaken by students and staff. The NHMRC Statement on Ethical Conduct in Research Involving Humans outlines the parameters under which HRECs operate. Within this framework, each HREC develops their administrative procedures and guidelines. While HRECs are bound by the NHMRC Statement on Ethical Conduct in Research Involving Humans, they are not bound to comply with individual codes of ethics such as the ANZSOC Code of Ethics.

In summary, obtaining voluntary informed consent is a basic premise outlined in key ethics documents. Informed consent may best be conceptualized as an accepted principle governing human research. The need to obtain voluntary informed consent is reinforced through ethical codes and HRECs. However the degree to which such requirements are needed or best suited to the full range of disciplines from medicine to anthropology has never been articulated.

**Signed Consent Forms**

Signed consent forms are the most commonly used method of obtaining informed consent in research on humans. Consent forms are frequently accompanied by an information sheet outlining the purpose of the research, the methodology, what involvement in the research will involve and the potential risks to the individual.
While the wording of consent forms and information sheets may vary across institutions, within an institution a HREC may provide standardized wording for use on all such documents.

It is the requirement for signed informed consent forms that produces the clearest conflict between interests, needs and perspectives of institutions, HRECs and criminological researchers. Whilst signed consent forms provide a seemingly perfect legally defensible “proof” of informed consent that satisfies and protects members sitting on HRECs they create a level of bureaucracy that obstructs research while actually damaging the interests of research participants. They obstruct research by introducing a formal procedure that is often beyond the capacity of the participant and abrasive to the contact between researcher and participant. The form itself reads like a legal document.

Previous research has raised concerns over the readability of these documents and the degree to which they are comprehensible by research participants. Consent forms are typically written at a level that requires a higher level of education to read and understand than is suitable for the intended research participants (Matthew & McGrath, 2002; Ogloff & Otto, 1991; Paasche-Orlow, Taylor, & Brancati, 2003).

A check of the recommended wording of consent forms at our own university indicated poor understandability (Flesch Reading Ease: 25.8) requiring completion of secondary education (Flesch Kincaid Grade level 12.0). This suggests that while the recommended consent form may be suitable for use with university students as
research participants, it will be extremely difficult to comprehend for the majority of offenders who have not completed secondary education.

**Perspectives on Signed Consent Forms**

Perspectives on signed consent forms vary between ethics committees, researchers and research participants. The use of signed consent forms is examined from the perspective of each of groups below.

**HRECs**

For HRECs, the use of information sheets and signed consent forms provide a form of proof that research participants have been informed about the research and consented to participate. This is consistent with the central aim of a HREC to protect the welfare and rights of research participants. In addition, it provides a legal safeguard against liability for the institution and the researcher (Daroesman, 1995). An NHMRC requirement is for HRECs to retain copies of approved information sheets and consent forms on file (NHMRC, 1999: Section 2.32). As part of the monitoring of research projects, HRECs may conduct random inspections of signed consent forms NHMRC 1999:Section 2.36).

**Researchers**

For researchers, signed consent forms provide documented proof that each research participant has given their consent to participate in the research project. This provides a legal safeguard against liability for the researcher (Daroesman, 1995). However, the requirement to obtain signed consent forms as an indication of informed consent may adversely affect the research. Because identifying information is required on a consent
form, potential participants may choose not to participate in research projects which require self-reporting of illegal activities, if this information may later serve to incriminate them. This can affect both response rates and the representativeness of the sample. Potential participants who do agree to sign the consent form may choose to limit their disclosure in the research, affecting the quality of the data. The failure to provide anonymity increases the likelihood of self-protecting answers, particularly in relation to illegal activities. For example, in the second author’s previous research with prisoners, Indermaur (1995) faced many refusals to participate in research because of the requirement for a signed informed consent form. While prisoners were willing to talk openly about their prior criminal activities, they were not prepared to do so when identifying information was required.

Signed consent forms do not serve the interests of the research participant because they provide the only identifying link between the research participant and the data collected from them. Legislation may occasionally protect the confidentiality of data collected. For example, in the United States of America, the National Institute of Health and National Institute of Justice provide protection for researchers for specific projects where disclosure of information could have adverse consequences for research participants. This protection enables researchers to refuse to disclose identifying information on research participants in any proceeding (civil, criminal, administrative, legislative, or other) at federal, state, and local levels.

Within Australia, legislation exists in some areas that provides protection to researchers and their research participants (e.g. *Commonwealth Epidemiological Studies (Confidentiality) Act* 1981; *ACT Epidemiological Studies (Confidentiality) Act*
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1992). However, the research that is covered by these acts is very limited. The *Commonwealth Epidemiological Studies (Confidentiality) Act* 1981 covers only prescribed Commonwealth epidemiological studies. To date, it has covered only ‘a handful of studies’ (Beyer, 2003:1). The *ACT Epidemiological Studies (Confidentiality) Act* 1992 covers only prescribed epidemiological studies conducted within the ACT. Without legislative protection, researchers may be required to disclose ‘confidential’ information. Aside from mandatory reporting of notifiable diseases and suspected child abuse, data can be subpoenaed where it is deemed to be in the public interest (NHMRC, 2001).

The risk of data being subpoenaed is not just a theoretical risk. Russel Ogden, a student at Simon Fraser University in Canada, conducted research which involved interviewing people who had assisted in the suicides and euthanasia of persons with AIDS. Ogden was subpoenaed by the Vancouver Coroner to give evidence at an inquest (Palys & Lowman, undated).

While, to our knowledge, no researchers have been subpoenaed within Australia, the perceived risk of data being subpoenaed has affected the conduct of research. Two research projects were suspended by University of Melbourne ‘because of doubts raised about the capacity to protect confidentiality in the conduct of research into illegal behaviors’ (Fitzgerald, 1995: 4). David Moore, a researcher with the National Centre for Research into the Prevention of Drug Abuse at Curtin University of Technology, expressed concern over the lack of legal protection for himself and his data on drug users when interest was shown by law enforcement officials in his research (Loxley & Hawks, 1995). A further study by the National Centre for
Research into the Prevention of Drug Abuse was relocated from the street to prisons upon interest by the Drug Squad (Loxley & Hawks, 1995).

In many criminological research studies, the threat of subpoena could be removed by not using signed consent forms. However, the use of such forms may be mandated by some HRECs. HRECs have power over researchers in determining the consent procedures to be used. A survey of HRECs in Australia found that in 95% of cases where HRECs sought changes to research proposals, the changes related to consent issues (McNeil et al, 1990, cited in Daroesman 1995). Failure to obtain HREC approval for a proposed method of obtaining informed consent can result in the termination of a research project. To ensure compliance with HREC a university may deem that research grants are not released to researchers until formal HREC approval is obtained.

Given the risk of subpoena the length and detail of the informed consent form should technically be increased to make clear that any claims by the researcher of confidentiality must be limited and can be over-ruled where particular legal proceedings are instigated. To ensure total protection participants should also acknowledge and consent to research in light to this possibility.

Particular difficulties with consent procedures may exist for researchers where research is funded by, or conducted within, more than one organisation. Azar (2002) described a study where every research participant was required to sign two consent forms, one meeting the requirements of the university Institutional Review Board, and one meeting the requirements of the medical centre from which the research participant was recruited. Each medical centre used a different form.
In these circumstances it is difficult to imagine that the research participants involved viewed consent forms as other than an administrative necessity. If the intent of a consent form is to ensure that an individual freely consents to participate in research about which they have been fully informed, what purpose does a second form serve from the point of view of the research participant? For the potential research participant it is likely to be seen as yet one more “favour” for the researcher. The focus is removed from that of fully informing potential participants about the research, to one of completing administrative requirements for the researcher.

*Research participants*

It could be argued that the signing of an informed consent form is beneficial to the research participant as it serves to clarify and confirm for the participant that their involvement is voluntary and that their rights are acknowledged. However, it is worth asking if this is really a benefit to the participant. It may be considered duplicitous to argue that the form is for the benefit of the research subject. In effect the subject gains nothing and the researcher gains documentary evidence of consent.

The issue of exchange between the researcher and potential subject is an important one that goes to the heart of the informed consent issue. If we accept that the informed consent form is essentially an exchange that serves the interests of the researcher at the potential cost of the subject this presents an interesting reversal of customary practices where one party is seeking to gain information from another party. Waldram (1998) explored this point in his discussion of conducting research with Aboriginal prisoners in Canada:
It is normal practice for anthropologists to offer gifts, money or other reciprocal services to those who are involved in our research. . . . In effect, while expecting the inmates to give to us, we were legally prohibited from reciprocating. We managed to work around this problem in a variety of ways. In a few institutions we were allowed to offer a single cigarette to inmates as a spiritual offering of tobacco, which normally precedes a request for assistance or knowledge. (p. 242)

The issue of exchange is one of the great hidden issues that govern the everyday life of social science research in Australia and elsewhere. While the researcher wants information from the subject and a signed informed consent form the subject may well ask “what’s in it for me?” A less skeptical view of human nature may hold that subjects would be willing to respond to reasonable requests for information, psychological issues of exchange from the subtle psychological impressions of respect and gratitude to more base rewards such as getting out of a dull or demanding work routine should not be over-looked. Also it needs to be acknowledged that it is normal within many research projects to offer small amounts of “compensation” to research subjects which range from chocolate bars to payments for “travel cost”. These gratuities clearly help the exchange demands faced by researchers but do not appear to have a place within the considerations of HRECs.

While a range of factors (e.g., societal factors, research design, researcher characteristics, perceived benefits to self and others) may interact to determine whether an individual will participate in research (Groves, Cialdini, & Couper, 1992),
the limited research that has been conducted into the motivation of those individuals who do participate in research supports the notion of altruism as one of the primary motivations (Fry & Dwyer, 2001; Hayman, Taylor, Peart, Galland & Sayers, 2001; Roberts, Warner & Brody, 2000; Smith, King, Hindley, Barnetson, Barton & Jobst, 1998). While the issue of the motivation of subjects to participate in criminological research and the potential benefits of participation has not been sufficiently examined, we need to assume people want to be helpful and will comply with a reasonable request from a serious researcher. In this context, what is the meaning of an informed consent form? The only reasonable interpretation is that it is one more favour that is being asked for - in this case for the benefit of the researcher.

Given consent forms may not be comprehensible to offenders where the reading level is pitched too high, they may be signed without an understanding of the content (Mann, 1994). Further, signing a consent form can result in research participants believing they can not sue the researcher (Mann, 1994). In short, use of a consent form is interpreted, probably correctly, as a request and favour asked of the participants for the benefit of the researcher. This is despite the original intent of informed consent forms as providing a benefit to the participant.

Where identifying information is requested from research participants, researchers are unable to provide absolute assurances of confidentiality. The ability of the researcher to deliver on promises of confidentiality have not been examined in the depth required given this is the essential offer or promise being made to the research participant.

Despite this, clauses as to the effect that such protections can not be provided are rarely made explicit in consent forms and theoretically could give rise to a legal suit
that such protections were not made explicit and indeed the general tone of the form might suggest they were available.

One of the reasons that signed consent forms may have been so widely accepted as part of the administration of research in Australian Universities is not for the benefits that they provide to research participants but rather to research administrators and others. Signed consent forms provide proof of research participation which can be used to substantiate a claim that the research was undertaken. Perversely it may also facilitate subpoena of a researcher. Under these circumstances, the potential exists for information provided by the research participant as part of a research project to later be used to incriminate them (Fitzgerald, 1995).

When viewed in light of the principles of ethical research the use of signed consent forms in criminological research does not hold up to scrutiny. The combined threats to research participants and to the integrity of research projects though decreased response rates, unknown effects on the representativeness of samples and the dubious quality of the data obtained under circumstances when signed consent forms are mandated are contrary to these principles. Research studies are arguably less ethical where informed consent procedures result in poor quality data (Rees & Sheard, 2002). This highlights the need to look for alternative methods of obtaining informed consent that do not require identifying information from research participants in criminological research.
International Perspective

It is interesting to note that there may be different expectations developing within research communities in different countries concerning the use of signed consent forms. British criminologists report that signed informed consent forms are usually not required by funding agencies, government departments or administering universities. Whilst British criminologists are sensitive and alive to the need for properly informed consent to be given and brief interviewers in such a way that the voluntariness of the research is assured, signed consent forms are seen as being impractical, significantly decreasing response rates and in many cases perverse to the atmosphere of open disclosure being sought by researchers, often in highly controlled environments like prisons and police stations.

As an example, consider the research which seeks to understand the way individuals give up crime. The ‘desistence’ literature requires innovative and intensive investments in locating individual desistors, gaining their trust and providing an environment where the (ex) offender will speak frankly about their experience. One notable recent study from the UK (Maruna, 2001) involved interviews with 65 individuals. Maruna mentions that he provided participants with ‘compensation’ for their time, but does not seem to have presented them with an informed consent form for signing. In contrast, similar research carried out by Leibrich (1993) in New Zealand struggled with ethical issues such as informed consent. In her book Leibrich details (in the Appendix) the issues in regard to informed consent (p. 242-244) and reveals in regard to signing forms only that: ‘before the researcher leaves, the person will be asked to sign a contract with the researcher, which sets out the agreement discussed at the beginning of the interview.’ (pp. 242-243). Leibrich does not provide
detail on how many responded to the request to sign the contract, but it is worth noting that this request came after an interview lasting on average two hours and following a range of preliminary inquiries, conversations and explorations – so it is fair to assume that by this stage a relationship had developed by researcher and subject. The existence of this relationship may well be key to the willingness of subjects to comply with requests by the researcher.

**Informed consent and subjects in dependent relationships**

The use of signed consent forms is perhaps most contentious when research is conducted with marginalized, disempowered groups or persons in dependent relationships. Criminological research is frequently undertaken with persons who are disempowered and in dependent relationships. In particular, research with prisoners provides a prime example of the complexities of working with individuals who are disempowered and in dependent relationships. Particular care must be taken to ensure that prisoners, or indeed any offenders accessed through channels of the criminal justice system, know their rights, understand the concept of informed consent and do not feel coerced or obliged to participate in the research in any way.

Section seven of the NHMRC statement (NHMRC, 1999) deals with “Research involving persons in dependent or unequal relationships.” This section is somewhat ambiguous as it refers to the existence of unequal power relationships and lists a number of dyads including “prisoners and prison authorities”. It is therefore not clear whether the statement is mainly concerned with research undertaken by prison authorities or is intended to extend more widely than this. However section 7.3 merely provides the remedy that “the researcher must give an assurance that refusal to
participate in, or decision to withdraw from, the research will not result in any discrimination, reduction in the level of care or any other penalty” (p. 30). It is likely that prisoners may be more convinced of such assurances when the researcher is clearly not aligned with, part of, or held in some particular favour by the relevant authorities. Some offenders/prisoners may feel that they have something to gain if they are seen as “co-operating.” Procedures need to be adopted to disavow this belief. The clearest way to achieve this at a non verbal level is for the researchers to be perceived in every way to be separate, independent and removed from the agencies of the criminal justice system.

Waldram (1998:243) made the strong point that in our effort to “protect” those in dependent relationships we risk the kind of self serving paternalism that has characterized many interactions with marginalized groups people in the past. Ethical social science, Waldram argued, depends on us not only understanding that nature of consent but also respecting and privileging the agency and autonomy of the individual, perhaps especially when they are in dependent relationships.

When researching prisoners and other marginalized groups, researchers need to ensure that they are not adding yet another layer of exploitation. The expenditure of time and effort to ensure that potential research participants within these groups understand the proposed research, the concept of informed consent and do not feel coerced or obliged to participate in the research is more likely to result in informed consent than the signing of a consent form.
Alternatives to Signed Consent Forms

There is nothing in the current NHMRC guidelines that prevents the development of alternatives to signed consent forms. As cited earlier, Section 1.9 of the guidelines clearly provides for alternative methods of obtain consent:

Where consent to participate is required, research must be so designed that each participant’s consent is clearly established, whether by a signed form, return of a survey, recorded agreement for interview or other sufficient means (p. 12, italics added).

While HRECs may vary in their views on optimal methods for obtaining informed consent, the potential to waive the requirement for signed consent forms in situations where this presents a threat to confidentiality exists (Daroesman, 1995).

There are precedents for the waiving of signed consent forms in criminology. Two large and highly publicised, commonwealth funded research projects conducted by the AIC have proceeded without the need for signed informed consent forms. The first of these is the Drug Use Monitoring in Australia (DUMA) project. Hundreds of offenders at lock ups around Australia are routinely quizzed about their lifestyle and drug use.

As part of this process detainees are initially shown a statement describing the study, for those with reading difficulties interviewers read the statement to them. Following this interviewers point out that the person does not have to do the interview if they do not want to; they do not have to answer any questions they do not want to; that they can stop the
interview and leave at any time. Finally they are asked if they agree to participate in the study (Makkai & McGregor, 2002:20).

The second project proceeding without the use of informed consent forms is the Drug Use Careers of Offenders (DUCO) project (see http://www.aic.gov.au/research/drugs/research/duco-intro.html). Interviewers employed a method of reading information to participants and obtaining their verbal consent to be interviewed.

At the Crime Research Centre, we adopted an alternative to signed consent forms in research evaluating the Perth Drug Court Pilot Project. As part of the evaluation we conducted semi-structured interviews with offenders who were involved with the Drug Court, covering potentially incriminating topics regarding their drug use and compliance with the Drug Court. In conjunction with the HREC at the University of Western Australia procedures for obtaining informed consent for this group of offenders without using signed consent forms were developed.

Current clients of the Drug Court were approached outside the Drug Court and invited to take part in the evaluation. Prior to the interview, individuals who accepted the invitation to participate were read the contents of the informed consent form, given an information sheet will full details about the research, asked if they had any questions about the research and asked if they consented to the interview. The interviewer recorded on the interview sheet that the contents of the consent sheet had been read to the respondent and an opportunity had been provided for asking questions. Following these preliminaries, the participant was interviewed if informed consent has been
obtained. At no stage during the consent or interview process was the individual’s name or identifying information requested.

There are three major advantages to this approach. First, through reading the consent form to offenders, rather than the offender reading the form, comprehension of the information provided is likely to be improved (Wolgater, Howe, Sifuentes & Luginbuhl, 1999). Comprehension may be further increased by the practice of ensuring the opportunity for discussion and questions about the research is provided. Verbal explanations by researchers are rated by research participants as the most useful source of information about research (Hayman et al, 2001). These procedures are designed to ensure that the consent obtained is truly informed.

Second, as no identifying information is obtained, the potential for information obtained during the research process to be used against research participants in later legal proceedings is removed. For Drug Court participants, this also meant that any fears that their involvement in the research may in some way jeopardise their continuation with the Drug Court program were alleviated.

Third, as identifying information is not obtained using these procedures, threats to the validity of the research are reduced. Because research participants can be confident that the information they supply will not be used to incriminate them at a later date, they are less likely to refuse to take part in the study, removing the threat to response rates and the representativeness of the sample obtained. Further, it reduces the perceived need for self-protecting responses on sensitive topics.
There are positive benefits from adopting these alternative methods of obtaining consent for research participants and researchers. This manner of conducting research ensures that the rights of participants are maintained and protected with less liability, as the researchers remain unaware of the names of the respondents or other identifying information. The researcher obtains the data they require without risking affecting response rates, the representativeness of the sample or the quality of the data.

Indeed, the main disadvantage with this procedure is that the actual quality of the research can not be audited. However consent forms were never intended as a method of auditing research and having consent forms used for this purpose would probably be in breach of the information provided to participants on how their information would be used.

**Conclusions**

The time for taking a closer look at the issue of informed consent in criminological research is overdue. The need for ensuring that criminological research meets a high ethical standard is paramount, and obtaining informed consent from all research participants is central to this. A more meaningful way of ensuring this is achieved than the current laborious and self serving mechanisms of the signing of consent forms is to start from the humanitarian principle that at the very least all research should ensure that ‘it does no harm’. This principle can provide a lens against which we can hold up criminological research and ask – does it do any harm? Could it possibly do harm? We may believe it will do ‘good’ but realistically we can never be sure and what is more important the research participant can not be sure. The essential
compact, the trust between researcher and participant, is therefore, that the procedure will at least do no harm. If at all possible the research may also enhance, promote and reinforce the human rights, sense of empowerment and esteem of the research participant. The question of the best way to achieve this will vary with the particular circumstances of the potential research participants. In many cases requesting interviewees to sign a form signifying ‘informed consent’ does not enhance human rights and may place researchers and research participants in less than preferred positions.

Obtaining informed consent does not always necessitate obtaining a signature or other personally identifying information. In some situations, research participants and researchers can be better protected through the development of alternative measures. In deciding the appropriate form of obtaining informed consent, the requirements of the institution, the ethics committee, the proposed research, the researcher and the research participants need to be considered. Researchers need to work with institutional ethics committees to establish workable procedures that provide protection for all parties.

While individual researchers should pursue workable alternatives with their institutional ethics committees, there is a need for action at a broader level. We urge ANZSOC, as the representative body of criminologists within Australasia, to clearly articulate in their Code of Ethics the issues involved and alternatives available. Actions such as this can mirror efforts by other social and behavioural science
disciplines\textsuperscript{2} to ensure that meaningful and appropriate guidelines are developed for the social and behavioural sciences.

\textsuperscript{2} For example, the American Psychological Association is currently developing educational documents for Institutional Review Boards aimed at increasing their understanding of the goals and procedures of behavioural research (Azar 2002).
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